



August 31, 2001

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
Office of the City Attorney
City of Dallas
1500 Marilla, Room 7BN
Dallas, Texas 75201

OR2001-3863

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151412.

The City of Dallas (the "city") received a request for a copy of correspondence and information sent between the city and certain establishments under audit by the city. You state that you will release some of the requested information. However, you claim that two responsive documents are excepted from disclosure under section 552.101 of the Government Code. You also indicate that you notified an interested third party, Invinoveritas, Inc., pursuant to section 552.305 of the Government Code. However, we have not received any comments from Invinoveritas, Inc. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 protects from required disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. You contend that the submitted documents are confidential under section 151.027 of the Tax Code and Attorney General Opinion No. H-661 (1975). Section 151.027 applies to the comptroller's office and makes confidential information submitted to the comptroller or information that the comptroller obtained during the course of an examination conducted under chapter 151. *See* Tax Code § 151.027; Open Records Decision No. 520 (1989); Attorney General Opinion No. H-661 (1975). Section 151.027 does not apply to information in the possession of another governmental body, even if that information has also been obtained by the Comptroller in the course of an examination under chapter 151 of the Tax Code. *See* ORD 520. Consequently, section 151.027 does not apply here. Because neither you nor Invinoveritas, Inc. makes any other argument for withholding the submitted information, we find that it must be released. *See* Gov't Code § 552.110(b) (to prevent disclosure of

commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

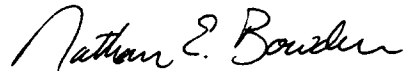
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 151412

Enc: Submitted documents

c: Ms. Avi Adelman
Barking Dogs
P.O. Box 140396
Dallas, Texas 75214-0396
(w/o enclosures)

Invinoveritas, Inc.
1930 Greenville Avenue
Dallas, Texas 75206-7439